

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7317 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AKHER KARSHAN ARJAN

Versus

DY COLLECTOR

Appearance:

MR JITENDRA M PATEL for Petitioners
MR ND GOHIL, ASSISTANT GOVERNMENT PLEADER for
Respondent No. 1, 2 and 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. Learned Advocate Mr. Patel appearing for the
petitioner is not present even on the second call. Heard
learned Assistant Government Pleader, Mr. N.D. Gohil

for the respondents.

2. This petition arises of a lease of a parcel of land bearing Survey No.253/1 admeasuring 6 acres situated

at Village Arena. By order dated 27th December, 1971, the said parcel of land was leased to one Swamy Gurucharnanand Nityanand for a period of 30 years for raising fruit bearing trees. It however appears that the said Swamy Gurucharnanand instead of raising fruit bearing trees on the said parcel of land gave a power to one Aher Karshan Arjan. The said power was revoked on 9th May, 1985 and the leasehold right was relinquished by the said Swamy Gurucharnanand and the Revenue Authorities were informed accordingly. Pursuant to the relinquishment of leasehold right by Swamy Gurucharnanand, the Deputy Collector on 4th October, 1986 gave a notice of eviction to the occupants aforesaid Aher Karshan Arjan and one Harijan Megha Sajan. It is stated in the said notice that the land in question was leased to Swamy Gurucharnanand for raising fruit bearing trees and both the addressees were in illegal occupation of the said land. They were, therefore, called upon to show cause why they should not be evicted of the said land. The said notice was answered by Karshan Arjan. It was stated that the said Karshan Arjan had spent a sum of Rs.75,000/- and had raised some 150 fruit bearing trees on the said land. After hearing him, the Deputy Collector under his order dated 21st January, 1987 held that the said Karshan Arjan was in illegal occupation of the land in question and ordered summary eviction of the said Karshan Arjan. The said order was confirmed by the Collector on 1st December, 1987 in Appeal No.72 of

1986-87 and also by the Gujarat Revenue Tribunal on 3rd March, 1989 in Appeal No.Ten.A.R. 42 of 1987. The said Karshan Arjan died pending Appeal before the Collector and the matter has been pursued by his heirs and legal representatives, the present petitioners. Feeling aggrieved, the petitioners have preferred the present petition. Pending this petition, this Court had ordered the respondents to maintain status quo obtaining as on 18th March, 1989. I am informed that in view of the status quo ordered by this Court, the said land continues to be in occupation of the present petitioners. However,

it is contended that the petitioners have not been using the land for raising fruit bearing trees but have been cultivating it for cash crop i.e. the groundnut. Thus, not only the petitioners are in illegal occupation in breach of the terms of the lease but have also used the land for the purpose other than the one for which it was leased. The order of eviction therefore, is legal and valid and requires to be sustained.

3. The fact that the land is not being used for raising fruit bearing trees is not borne out of records. None of the orders impugned herein refers to the land being used for purpose other than the one for which it was leased. Besides, the respondents have not even filed a counter affidavit to controvert this fact. The Court must therefore proceed on the basis that the land is being used for raising fruit bearing trees and some 150

fruit bearing trees are raised on the said land as contended in reply to the notice.

4. It is not disputed that the land was originally leased to Swamy Gurucharnanand Nityanand and the said lessee could not have transferred the land to any other person. The said land had thus been illegally transferred to late Karshan Arjan and undoubtedly, the petitioners being his successors in possession are also in illegal occupation of the said land. The order of eviction made by the Deputy Collector and confirmed by the Collector as well as the Revenue Tribunal is, therefore, absolutely just and legal and does not warrant interference. However, since the said land is in occupation of the present petitioners for nearly 25 years, it would be appropriate if a fresh lease can be granted to the present petitioners provided the land is being used for raising fruit bearing trees in consonance with the terms of the lease.

5. In the circumstances, it is directed that the petitioners shall, within six weeks from today, make a fresh application for grant of lease of the land in question. If such an application is made, the concerned authority shall consider the same in accordance with law and may grant the lease to the present petitioners provided the land in question is being used for no purpose other than for raising the fruit bearing trees.

6. Subject to the above direction, the petition is dismissed. Rule is discharged. The status quo as on 18th October, 1989 ordered to be maintained shall continue till 31st May, 2000.

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